



STATE OF MAINE
MAINE DEPARTMENT OF AGRICULTURE, FOOD & RURAL RESOURCES
BOARD OF PESTICIDES CONTROL
28 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0028

SETH H. BRADSTREET III
COMMISSIONER
HENRY S. JENNINGS.
ACTING DIRECTOR

BOARD OF PESTICIDES CONTROL

December 15, 2006

Colby Thomas Rooms, Hampton Inn
425 Kennedy Memorial Drive, Waterville
(Exit 127 from I-95)
MINUTES

9:30 A.M.

☒ Eckert, Jemison, Stevenson, Qualey, Simonds, Walton and Humphreys were present.

1. Introductions of Board and Staff

☒ Board members and staff introduced themselves.

2. Minutes of the November 17, 2006 Board Meeting

Presentation By: Henry Jennings
Acting Director

Action Needed: Amend and/or approve

☒ Jemison/Walton: Moved and seconded approval of the minutes.

In Favor: Unanimous

3. Request from Training Development Corporation for Grant to Help Support a Worker Protection Safety Training Program for Summer 2007.

Since 1995, the Board has supported a Migrant and Seasonal Farmworker Program conducted by the Training and Development Corporation (TDC) of Bucksport. During this past year, 635 individuals received training under this project. TDC is planning to again work in partnership with the Maine Migrant Health Program to host two AmeriCorps members and one Health Educator during the 2007 agricultural season. The staff will point out that the total cost will be similar to the past year and that amount has been budgeted in the Board's FY '07 work plan.

Presentation By: David Klein, M.S.
TDC Principal Practitioner

Action Needed: Discussion and determination if the members wish to fund this grant request

- ☒ David Klein of the Training and Development Corporation reviewed the 2006 accomplishments under the grant that included providing pesticide safety training for 550 migrant workers as well as other services directed toward migrant workers. Klein conveyed that the partnership was working well and ensures that important services are provided. Michael Rowland, MD, Medical Director for the Maine Migrant Health Program echoed Klein's sentiment and agreed the partnership appeared well-suited for all three agencies.

Board members discussed what the target audience was for the two educational programs. Most of the focus is on migrant agricultural workers in the blueberry and broccoli industries. How employees are recruited was also discussed. Most workers come from college language programs since a strong background in Spanish is a must.

Simonds/Humphreys: Moved and seconded that the grant request be approved.

In Favor: Unanimous

4. Workshop Session to Review the Rulemaking Record on Proposed Revisions to Chapters 10, 20, 21, 27, 28, 31, 40 and 41

A public hearing was held on November 17, 2006 on a series of minor housekeeping amendments to eight different rule chapters. Four people spoke at the public hearings and 13 written comments were received prior to the December 1, 2006 deadline. The Board will review the comments and begin discussions about whether the proposed amendments are warranted.

Presentation By: Henry Jennings
Acting Director

Action Needed: Determine whether revisions are warranted

- ☒ Jennings pointed out that the hearing transcript had just arrived and a copy was placed in each Board Members meeting folder. He briefly summarized the substantive comments from the November 17th public hearing. Jennings then verbally summarized all of the comments by chapter.

There were no comments on Chapter 10 so members concluded it was appropriate to move forward with the minor amendment.

The proposal in Chapter 20 to require a written agreement for ongoing, periodic applications received a significant volume of comments. Most commenters felt it would place an unreasonable burden on the affected industries. It was also pointed out that many consumers are reluctant to sign a contract, even though they want the service. Some commenters offered alternative suggestions on how to ensure that consumers know what service they are agreeing to. One utility company employee pointed out the last paragraph in the proposed revisions could be interpreted as requiring the company to enter into written agreements with all of the easement holders.

The staff agreed that the exemption for easements should apply to all three of the proposed additional paragraphs. Staff also felt it might not be necessary to require a written agreement as long as there were adequate measures in place to verify that consumers agree to the service and that the ongoing nature of the service is clear.

Much discussion ensued on the merits and difficulties associated with requiring signed, written agreements. Ultimately, members reached consensus and directed the staff to bring back alternative language that is supported by the rulemaking record. The new language should allow for the use of written agreements or alternative methods that ensure companies obtain verifiable authorization that is substantially equivalent to a written agreement and assures that consumers are aware of the services they are agreeing to.

There were no comments on the proposed change to Chapter 21. Accordingly, the Board determined it was appropriate to proceed with the phone number change.

The proposed change to Chapter 27, which sought to incorporate a Board policy that allows a rapid response when arbovirus positive animals are detected in the vicinity, received one comment from Russell Libby, Executive Director of MOFGA. Libby felt the proposed amendment would discourage the use of IPM. He argued schools should be using IPM approaches targeting mosquito larvae.

The staff felt Libby raised a legitimate point but was quite concerned with maintaining a state requirement that would inhibit a school's ability to protect children, staff and parents from arboviruses. Moreover, mosquito IPM can pose challenges to schools because the breeding areas may be adjacent to school property and/or a state discharge permit may be required. Consequently, the Board elected to keep the proposed change as drafted.

There are two proposed amendments to Chapter 28. The first change in Section 1 would allow persons residing within 500 feet of an outdoor pesticide application site to request a copy of the applicable MSDSs. One person from the agricultural sector wrote to support the change in the spirit of right-to-know, while another person from the agricultural sector opposed the amendment on the grounds that farmers can't reasonably be expected to explain an MSDS.

The staff agreed that farmers aren't in a good position to explain an MSDS. However, it pointed out that farmers with employees are already required to maintain MSDSs and provide hazard communication training to new employees. Moreover, staff felt that lay people in general aren't expected to explain the documents, that the same provision in Section 2 of the rule had not resulted in hardships for commercial applicators, and that staff would educate growers to direct inquiries to the staff toxicologist. Consequently, members elected to maintain the proposed amendment as written.

The second proposed change to Chapter 28 involves a new economic hardship waiver provision for the \$20 fee to be included on the outdoor Pesticide Notification Registry. Two people submitted written comments in opposition to the proposal. Both comments appeared to equate the current proposal to a previous rulemaking proposal which would have abolished the fee altogether.

The staff viewed the two proposals as vastly different and did not foresee a likelihood for abuse. The Board elected to maintain the current proposed language.

The proposed consolidation of commercial applicator categories in Chapter 31 received several comments opposing the combination of the commercial blueberry category with the agricultural plant category. The staff suggested accepting these comments since the benefits of this particular change would be marginal. The Board agreed to keep the commercial blueberry category separate.

The staff took no position on the proposed changes to Chapters 40 and 41 that would have reclassified trichlorfon from limited to restricted use. Members discussed the history of the current classification scheme and the pros and cons of making trichlorfon available to commercial applicators to control grubs in turf. After considerable debate, a straw poll showed the majority of the members did not support the change as currently written. Some members seemed receptive to considering a revised proposal that includes additional safeguards to prevent human exposure.

5. Review of Draft Report to the Legislature Pursuant to Public Law 2006, Chapter 553

Public Law 2006, Chapter 553 requires the Board to complete an assessment of risks and benefits from applying pesticides near marine waters for control of the browntail moth and report its findings and recommendations to the legislature by January 2, 2007. The Board addressed its responsibilities under the law and has reviewed two draft reports at its previous two meetings. The staff will present an updated draft report that incorporates suggestions from the November 17th meeting.

Presentation By: Henry Jennings
Acting Director

Action Needed: Direct staff on developing report to the legislature

- ☒ Jennings directed members to the revised report to the legislature marked as item five in their packets. The revised report included changes suggested at the last meeting including reworking the section on the proposed legislation for the next session, a condensed version of the monitoring report, and a model bill. Jennings suggested the minimum wind speed for spraying should be changed from three to two miles per hour since this figure is cited in the drift control language contained on numerous pesticide labels.

Humphreys suggested a couple of minor wording changes on pages one and four that improved the accuracy of the Board findings. Eckert offered suggestions for improving the closing summary of the monitoring report.

Humphreys/Jemison: Moved and seconded approval of the report to the legislature as amended.

In Favor: Unanimous

6. Review of Issues Relating to State Registration of Bt Forage Corn and Board Policy on Health/Resistance Reviews

Dating back to 1994, the Board has entertained four state registration requests for plant-incorporated pesticides containing the gene expressing the δ endotoxin from the *Bacillus thuringiensis* bacterium. The first request involved the Newleaf potato which the Board approved in 1995. It turned out to be commercially unviable and was later discontinued by the registrant. The second set of requests was for Bt forage corn that was denied in 1998 due to a failure on the part of registrants to demonstrate scientific evidence of a need. At that time the Board verbally formalized a policy calling for the Medical Advisory Committee review of the health effects and an Ad Hoc Resistance Committee to discuss the potential development of insect resistance.

There are now over ten years of experience nationally with Bt corn. The Board will review the current state of the science relating to Bt corn and whether its previous review policy is still warranted.

Presentations By: John Jemison
Board Member and Extension Professor

Lebelle Hicks
Staff Toxicologist

Action Needed: Determine appropriate procedures for reviewing registration requests for plant-incorporated pesticides

- ☒ John Jemison gave a PowerPoint presentation covering his 2006 research on Bt Corn. Approximately twenty seven percent of the corn grown in the US in 2006 contained a Bt gene. Jemison reported there have been additional developments since the Board last entertained a registration request for a Bt corn product. Newer products express traits active against a broader range of insect pests, including soil pests such as cutworms and rootworms that have greater importance to Maine farmers.

Last year's trials showed no yield benefit, but the reduction in injury in stalk and leaf were significantly lower with the Bt varieties. This, however, did not lead to lower mycotoxin levels in the silage. Greater benefit may be seen in years when insect pressure is higher. Jemison reiterated that pollen drift and insect resistance are still important concerns that need to be managed carefully.

Humphreys expressed concern about pollen drift contaminating corn grown for organic dairies. She stated that pollen has been shown to drift up to four miles. Members also expressed concerns about enforcement of the refugia requirements that are critical to preventing the development of insect resistance.

A discussion took place on what issues would need to be reviewed prior to determining whether or not to approve a registration request. Consensus was reached that a human health effects review was not necessary, although Hicks was asked to review some articles that Humphreys supplied.

Members also agreed that registrants should be asked to provide information on the need/benefit to Maine farmers from Bt Corn. In addition, the Board would want to address both gene/pollen drift and resistance during consideration of a registration request.

7. Discussion Concerning Potential Development of an Indoor Notification Registry

At its July 21, 2006 meeting, the Board reviewed a list of potential discretionary tasks that had been prioritized through a voting process. Development of an indoor notification registry was ranked as its sixth priority. The staff will lead a discussion seeking to determine whether there is consensus to move forward with this task, and if so, what the basic tenets might be.

- ☒ This item was tabled due to time constraints.

8. Other Old or New Business

a. 2006 Product Registration Summary – W. Smith

- ☒ Smith reminded Board members that the legislature increased the annual pesticide product registration fee to \$150/product. The increased fee should generate approximately \$1,200,000 in revenues if the number of products registered remains static.

b. Letter on Vertebrate Pest Control from the National Pest Management Association – H. Jennings

- ☒ Jennings directed members to a letter received from the National Pest Management Association requesting that the Board reconsider submitting legislation relative to Maine's statute on vertebrate pest control. No action was taken since the deadline for submitting legislation through the Department had passed.

c. Legislative Update – H. Jennings

- ☒ Jennings stated that the Department was still on track to submit legislation to require persons applying pesticides at food handling establishments to be certified as commercial applicators. He directed members to language in a draft bill.

d. Update on the Technical Committee on Drift – L. Hicks

- ☒ Hicks reported that the next meeting of the technical committee is scheduled for January 29, 2007. She hoped to have a draft White Paper ready for the next meeting.

9. Schedule and Location of Future Meetings

January 19, 2007 in Waterville, February 16, 2007 and March 16, 2007 are the tentative dates for the next Board meetings.

a. Adjustments and/or Additional Dates?

- ☒ Members discussed the idea of holding monthly meetings at different locations such as colleges so that professors and students could attend. Parking was cited as the primary roadblock. The Board agreed that the February Meeting should be held in Waterville and added the date of April 13, 2007 to the list of future meetings.

10. Adjourn

- ☒ The meeting adjourned at 1:10 p.m.

Henry Jennings
Acting Director